

Office of the State Auditor
Performance Audit Division



**From the Office of State Auditor
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State of Mississippi

A Follow-Up Review of the Mississippi Worker's Compensation Commission

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Introduction

The Performance Audit Division of the Office of the State Auditor was assigned to perform a follow-up review of the Mississippi Workers' Compensation Commission (MWCC). The original report was undertaken in response to a referral from the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER). Their November 2003 report recommended the Auditor conduct an audit of the MWCC leave records to ensure that the Commissioners and other employees properly accounted for their time away from the office.

The first Audit Department report issued March 2004, found the following major issues:

- There were no written policies and procedures in place to account for time and leave of Commissioners and other employees.
- None of the three MWCC Commissioners accurately reported personal and sick leave taken.
- Personnel actions were taken by the Chairman without the approval of the full Commission.
- Administrative Judges and Court Reporters employed by the Commission were not required to document their time in a manner that would provide accountability for time worked.

During the exit conference all of the Commissioners indicated that they were willing to work to correct the above identified issues.

The purpose of this report is to determine what changes have occurred since the original Audit report was issued. The scope of work for this follow-up included researching MWCC activities as they related to the above issues and determining if positive changes occurred to mitigate the problems. Additional issues were identified in the course of interviews and documentation research. These issues will be listed generally at the end of this report. In addition to personal interviews with Commissioners and staff, leave forms and reports, travel forms, time sheets, cell phone reports, schedules and result sheets, as well as policies and procedures were evaluated to make the determinations found in this report.

Certain legal questions were answered in the original report. To recap, they included the following:

- Language in the Mississippi Code of 1972, Annotated §71-3-85 (1) and the Mississippi Supreme Court Case *Bruton v. Mississippi Workmen's Compensation Commission*, 178 So. 2d 673 (Miss. 1965) classify the Commissioners as full-time state employees and therefore they must follow the same rules, laws and regulations as other full-time state employees.
- Mississippi Code of 1972, Annotated §25-3-91 defines an employee for the purposes of the vacation and sick leave statutes. The Auditor has determined that a Commissioner fits within this definition. Additionally, because the Attorney General has opined that the Commissioner of Corrections (and the deputy Commissioners) as well as the Commissioner of Public Safety are all full time employees and must use leave accordingly; therefore the MWCC Commissioners must use personal leave when not performing job duties during a workday or for a missed workday as other State Commissioners
- PEER suggested that an employee be assigned to conduct the training that is currently performed by one of the Commissioners. State law also allows this. However, the Audit Department has stated that the Commission should make a determination as to whether this would be in the best interest of the Commission.

- The Commission as a body should set forth the rules and regulations for handling the administrative matters such as personnel. The Executive Director is responsible for only such duties as are assigned to him or her by the Commission as a body.
- The Attorney General has opined that MWCC funds must be expended in compliance with policies established by the State Personnel Board (SPB) and the Commission must abide by the personnel rules and regulations of the State Personnel Board rather than its own rules (A.G. Op., Minor, April 7, 2000)

Results of Follow-Up Review

After interviewing MWCC Commissioners and employees and after reviewing pertinent documentation, the Auditor has made the following determinations concerning the findings and recommendations of the 2004 review:

I. MWCC Written Policies and Procedures

At the time the original report was done, MWCC did not have policies and procedures to account for time and leave for its Commissioners and employees. Different divisions had separate, informal practices. Since that time, MWCC has compiled, approved, and to a large extent, has put into practice a set of such policies and procedures. All employees have gone through policy orientation sessions and MWCC has a staff member assigned to review the handbook with all new personnel. The policies and procedures appear to mirror standards set forth by the Mississippi State Personnel Board rules and regulations governing State employees.

Even though there is now a formal personnel handbook in place, the following policies appear to be disregarded at times by Judges and Court Reporters. These policies deal with leave, time, and attendance. Specifically, section V, Time and Attendance, part A) Work Schedule (pages 9-10) clearly states:

All employees are expected to work eight hours each day with the exception of Commissioner, Administrative Judges, who, by statute, are required to devote their 'entire time to the duties of the office.'

The phrase "entire time to the duties of the office" does not necessarily provide reason to work less than 8 hours a day, but rather it seems to strengthen the idea. While Audit staff were told that one of the reasons that reporters are allowed to work at home is because their schedules are not normal routines based on the travel and the court schedules, all of the time sheets examined over a two month period of time for all court reporters showed work 8:00 a.m. until 12:00 p.m. and 12:30 p.m. to 4:30 pm with the only exception being those who chose a one hour lunch and reported work cessation at 5:00 p.m.

Furthermore, Section V, Time and Attendance, part D) Leave Statutes and Policies (pages 10-11) states:

Leave is accrued or accumulates as a right; however it must be taken at the instance of the employer, i.e. the Commission, and in accordance with state personnel policies according to state law.

Leave policy that is currently in effect requires that:

1. Leave be requested in writing;

2. Approved by the supervisor; and
3. Approved by the Executive Director

Unless there occurs some unforeseen or unforeseeable circumstance on the last working day preceding the day the employee intends to take leave, personal leave may only be taken if requested and approved in the manner set out above...Otherwise leave must be requested in writing at least the day before leave is to be taken...Any "leave" taken other than through the approved method will be LEAVE WITHOUT PAY.

The policy goes on to say that such leave may trigger a "full examination" of the employee's work records to determine if there are other undocumented absentees without proper leave deduction.

In interviews, reference was made numerous times to employees who left without filing proper leave and also to judges and court reporters that did not even report to the MWCC office on Mondays and Fridays, let alone other days of the week. Additionally, retiring Chairman Smith stated in his interview that he has continued to allow court reporters and judges to work at home if they prefer. He also stated that no other group of employees has that privilege. While he said reporters must fill out weekly time sheets, Audit staff noted that they are often incomplete and likely not accurate (see examples). When asked, one Commissioner says very little if any real change has taken place since the leave policies were implemented. MWCC morale seems to be suffering due to the inconsistency in work place leave policies and their non-uniform application. On a leave related issue, there are five people in the entire MWCC who appeared to take no leave in a 3-month period of time they are all court reporters, judges, and Commissioners. The Audit staff was unable to verify the statements that certain employees disregarded leave policies. However, MWCC should uniformly apply leave, time and other workplace policies to all employees. Time sheets should actually and accurately reflect time worked and should be completely filled out.

II. MWCC Commissioners Reporting Leave Taken

The initial audit report found that none of the three MWCC Commissioners currently report leave taken even though they also are full-time state employees. While this may have improved some, there still appear to be some problems. Several people interviewed reported that two Commissioners were still not accurately taking leave. However, these statements could not be verified using existing records other than to show no apparent leave from June (where Audit staff began looking) to the time of the initial audit meeting in October 2004. One Commissioner refuses to follow proper procedure for turning in leave and time creating additional work for numerous MWCC staff. Another one admitted to purposely not turning in leave to make a statement about the policy not being enforced for others. These issues need to be resolved. State Personnel Board and MWCC policies and procedures should be fairly and uniformly applied with no exceptions. All three MWCC Commissioners should report leave taken using the policies and procedures set out in the MWCC personnel handbook.

III. Personnel Actions Without the Consent or Assistance of Commissioners

Previously, the Chairman had made several personnel related decisions without consulting the other Commissioners. In their October 2004 interviews, all three Commissioners agreed that this particular problem has been solved. Retiring Chairman Smith reported that he had done that in the past, but now he brings each personnel matter to the full Commission. However, one Commissioner did express concern about not being consulted about a court reporter vacancy that has not been filled. The

Commissioners should continue to meet as a body to decide such matters or they should delegate personnel duties entirely to the Executive Director.

IV. Volume of Work for Judges and Court Reporters

In the original report, the Auditor found that Judges and Court Reporters sometimes had low volumes of work at various times. Subsequently, the Auditor recommended that Commissioners analyze the staffing requirements with regard to Court Reporters to see if some money could be saved by contracting out these services. As far as the Audit Department could determine, no definitive decisions other than keeping the number of reporters down to 7 (instead of the full complement of 8) have been made in this area. Of the records we examined we found that page costs of reporters under the current system ran about \$60 per page not necessarily including travel. From other research the Auditor' Office has done, it was found that the cost of contracting this work out to one of several companies nationwide would run approximately \$3 per page. Audit staff also researched a means of automating the reporters' jobs and found that in 1997-98, there was a system that was put into place. Just as quickly however, it was done away with because there were those who did not like it. Audit staff believe that more research should go into cost saving and effectiveness measures such as contracting or automating the reporters' jobs. Also, if it is not already being done, workload redistribution more than once a week may alleviate the apparent disparity where some reporters seem to have more work than others.

Conclusion

In many ways, processes and procedures have improved at MWCC. However, there is still more improvement that can be achieved, some of which has a real potential to help the apparent morale problem at MWCC. Uniform application of policies and procedures is one important step to maintaining a strong organization. Having the Commissioners present for meetings and acting as a body should also continue.

The Office of the State Auditor stands ready to be of further assistance to the Mississippi Workers' Compensation Commission in implementing any one of these or any other issue.

Report Response from
The Mississippi Workers' Compensation Commission